

_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT LAND, WATER, AREAS, SITES, AND OBJECTS MAY BE ACQUIRED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS SUBJECT TO SPECIFIC LEGISLATIVE APPROPRIATION; AMENDING SECTIONS 23-1-102 AND 87-1-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, under Article IX, section 4, of the Montana Constitution, the Legislature shall provide for the identification, acquisition, restoration, enhancement, preservation, and administration of scenic, historic, archeologic, scientific, cultural, and recreational areas, sites, records, and objects and for their use and enjoyment by the people; and

WHEREAS, in conformity with this constitutional directive, it is incumbent that the Legislature oversee the funding for the acquisition of land, water, and other property by the Department of Fish, Wildlife, and Parks.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 23-1-102, MCA, is amended to read:

"23-1-102. Powers and duties of department of fish, wildlife, and parks. (1) The department shall make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state. ~~The~~ Subject to specific legislative appropriation, the department may by purchase, lease, agreement, or acceptance of donations acquire for the state any areas, sites, or objects that in ~~its~~ the department's and legislature's opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state historical sites. The department, with the consent of the commission and subject to specific legislative appropriation, may acquire by condemnation, pursuant to Title 70, chapter 30, lands or structures for the purposes provided in 87-1-209(2).

(2) The department may accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state. It may accept gifts, grants, bequests, or contributions of money or other property to be spent or used for any of the purposes of this part.

(3) A contract, for any of the purposes of this part, may not be entered into or another obligation incurred

1 until money has been appropriated by the legislature or is otherwise available. If the contract or obligation pertains
2 to acquisition of areas or sites in excess of either 100 acres or \$100,000 in value, the board of land
3 commissioners shall specifically approve the acquisition.

4 (4) The department has jurisdiction, custody, and control of all state parks, recreational areas, public
5 camping grounds, historical sites, and monuments, except wayside camps and other public conveniences
6 acquired, improved, and maintained by the department of transportation and contiguous to the state highway
7 system. The department may designate lands under its control as state parks, state historical sites, state
8 monuments, or by any other designation that it considers appropriate. The department may remove or change
9 the designation of any area or portion of an area and may name or change the name of any area. The department
10 may lease those portions of designated lands that are necessary for the proper administration of the lands in
11 keeping with the basic purpose of this part."

12
13 **Section 2.** Section 87-1-209, MCA, is amended to read:

14 **"87-1-209. Acquisition and sale of lands or waters.** (1) The department, with the consent of the
15 commission and subject to specific legislative appropriation and, in the case of land acquisition involving more
16 than 100 acres or \$100,000 in value, the approval of the board of land commissioners, may acquire by purchase,
17 lease, agreement, gift, or devise and may acquire easements ~~upon lands or waters~~ on land or water rights for
18 the purposes listed in this subsection. The department may develop, operate, and maintain acquired ~~lands or~~
19 ~~waters~~ land or water:

20 (a) for fish hatcheries or nursery ponds;

21 (b) ~~as lands or water~~ suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or
22 protection;

23 (c) for public hunting, fishing, or trapping areas;

24 (d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing
25 animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

26 (e) for state parks and outdoor recreation;

27 (f) to extend and consolidate by exchange, ~~lands or waters~~ land or water suitable for these purposes.

28 (2) The department, with the consent of the commission and subject to specific legislative appropriation,
29 may acquire by condemnation, as provided in Title 70, chapter 30, ~~lands~~ land or structures for the preservation
30 of historical or archaeological sites that are threatened with destruction or alteration.

(3) (a) Subject to section 2(3), Chapter 560, Laws of 2005, the department, with the consent of the commission, may dispose of ~~lands~~ land and water rights acquired by it on those terms after public notice as required by subsection (3)(b) of this section, without regard to other laws that provide for sale or disposal of state ~~lands~~ land and with or without reservation, as it considers necessary and advisable. The department, with the consent of the commission, may convey department ~~lands~~ land and water rights for full market value to other governmental entities or to adjacent landowners without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than \$20,000. When the department conveys land or water rights to another governmental entity or to an adjacent landowner pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.

(b) Subject to section 2(3), Chapter 560, Laws of 2005, notice of sale describing the ~~lands or waters~~ land or water rights to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the ~~lands or waters~~ land or water rights are situated or, if a newspaper is not published in that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the ~~lands and waters~~ land or water rights as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the ~~lands~~ land or water rights at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) When necessary and advisable for the management and use of department property, the director is authorized to grant or acquire from willing sellers right-of-way easements for purposes of utilities, roads, drainage facilities, ditches for water conveyance, and pipelines if the full market value of the interest to be acquired is less than \$20,000. Whenever possible, easements must include a weed management plan. Approval of the commission is not required for grants and acquisitions made pursuant to this subsection. In granting any right-of-way pursuant to this subsection, the department shall obtain a fair market value, but the department is

1 not otherwise required to follow the disposal requirements of subsection (3). The director shall report any
2 easement grant or acquisition made pursuant to this subsection to the commission at its next regular meeting.

3 (5) The department shall convey ~~lands~~ land and water rights without covenants of warranty by deed
4 executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the
5 secretary of state and further countersigned by the director.

6 (6) The department, with the consent of the commission, is authorized to utilize the installment contract
7 method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals
8 and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the
9 public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department
10 and appropriated by the legislature.

11 (7) The department is authorized to enter into leases of land under its control in exchange for services
12 to be provided by the lessee on the leased land."

13
14 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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